

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

February 19, 2014 at 10:00 a.m.

1. [13-34102-E-13](#) VITALY KUZMENKO MOTION TO DISMISS CASE
TSB-2 Christian J. Younger 2-5-14 [[27](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 5, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Failure to Commence Plan Payments

The Trustee argues that the Debtor did not commence making plan payments and is \$2,820.00 delinquent in plan payments, which represents multiple months of the \$940.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

Delinquency

Related to the failure of the Debtor to commence plan payments, the Trustee seeks dismissal of the case on the basis that the Debtor is \$2,820.00 delinquent in plan payments, which represents multiple months of

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the \$940.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Failure to Appear at 341 Meeting

Further, the Trustee alleges that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

Additional Bankruptcy Case Information

This bankruptcy case was commenced on October 31, 2013. The Chapter 13 Plan, Schedules, and Statement of Financial Affairs were filed on November 14, 2013. This is the Debtor's first bankruptcy filing in this District.

The proposed Chapter 13 Plan provides for monthly payments of \$940.00 for 36 months. Dckt. 9. No Class 1, 2, 3, 4, or Class 6 claims are to be paid. The Debtor provides for a \$9,000.00 Internal Revenue service Claim in Class 5 and a 10% dividend for Class 7 general unsecured claims (projected \$17,200.00 distribution). The plan provides that Counsel for the Debtor has received a \$1,500.00 retainer and is to be paid \$4,500.00 through the plan. Schedule I lists the Debtor having \$4,237.78 in gross income from his construction business and \$3,297.48 in expenses on Schedule J. Dckt. 11 at 21, 21. Schedule J lists \$1,417.48 for business expenses, but there is not the required detailed statement of such expenses attached.

Schedule I lists the Debtor's marital status as separated and that he has two pre-teenage children. Schedule J does not include any expense for health insurance, auto insurance, or taxes (self-employment or income). On Schedule B Debtor lists owing two vehicles, a 24 foot trailer, 14 foot dump trailer, Caterpillar backhoe, and an ATV. *Id.* at 6.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

2. [12-37003-E-13](#) DOROTHY BROOKINS
TSB-2 Peter G. Macaluso

MOTION TO DISMISS CASE
1-22-14 [[210](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 22, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Delinquency

The Trustee seeks dismissal of the case on the basis that the Debtor is \$920.00 delinquent in plan payments, which represents a partial month's plan payment of \$1,430.00. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Prior Plan Denied, No New Plan

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on November 5, 2013. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

OPPOSITION

Debtor's counsel filed an opposition to the motion, stating that the Debtor has not been cooperative in prosecuting the case since the Debtor's last appearance on November 8, 2013. Debtor's counsel is concerned that the Debtor is "unfairly influenced by the desire to keep her home, while having an abnormally large income tax obligations, and an on-going entity which appears to generate significant income." Opposition, Dckt. 217.

Based on the delinquency and failure to file a plan after denial of confirmation on November 5, 2013, cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

Dismissal of the case does not terminate the jurisdiction of this court or excuse compliance with its orders except as expressly provided in 11 U.S.C. § 349

3. [13-35505](#)-E-13 OSCAR MANLANGIT MOTION TO DISMISS CASE
DPC-1 Pro Se 1-9-14 [[17](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and the Office of the United States Trustee on January 9, 2014. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Failure to File Documents

The Trustee filed a Motion to Dismiss based on the Debtor's failure to file:

- Chapter 13 Plan

The petition was filed on December 9, 2013, by the court's calculation, it has been 72 days since the petition was filed. A review of the docket shows that the Debtor has not yet filed a plan. Failure to file a plan timely under 11 U.S.C. § 1321 constitutes cause to dismiss a case. 11 U.S.C. § 1307(c)(3). This is also unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Failure to Appear at 341 Meeting

Further, the Trustee alleges in the Supplemental Declaration of Christina Lloyd, that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341, on January 23, 2014. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

OPPOSITION

The Debtor filed an opposition to the motion. Debtor's opposition first asserts that Debtor filed a chapter 13 plan on December 23, 2013. Debtor's opposition states that a copy of said plan is included with the opposition as an exhibit; however, no such exhibit was included with the opposition. The docket shows that Debtor filed his Schedules, Summary of Schedules, Statistical Summary, Statement of Financial Affairs, and Statement of Monthly Income on December 23, 2013 (Docket # 12). However, as noted above, a review of the docket shows that no chapter 13 plan has been filed with the court to date. The Notice of Incomplete Filing and Notice of Intent to Dismiss Case (Docket # 10), mailed to the Debtor on December 11, 2013, clearly stated that the Debtor needed to file various Schedules, Summary of Schedules, Statistical Summary, and Statement of Financial Affairs *in addition to* filing the Chapter 13 plan.

Debtor's opposition next states that the Debtor was unable to appear at the First Meeting of Creditors because he was under the care of his primary physician on January 23, 2014 and January 24, 2014 and unable to travel. Debtor attached a note from a Dr. Francisco J. Marasigan stating that the Debtor was seen in Dr. Marasigan's office on January 24, 2014; the note makes no mention of January 23, 2014. FN.1. As mentioned above, the Meeting of Creditors was held on January 23, 2014.

FN.1. The opposing party filed the opposition and exhibits in this matter as one document. This is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." *Revised Guidelines for the Preparation of Documents*, ¶(3)(a). The opposing party is reminded of the court's expectation that documents filed with this court comply with the *Revised Guidelines for the Preparation of Documents* in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9014-1(d)(1). Additionally, the opposing party is reminded that the Local Rules require the use of the motion's Docket Control Number with the opposition. Local Bankr. R. 9014-

1(c). Here the opposing party omitted the Docket Control Number. This is not correct.

DISCUSSION

Debtor commenced this bankruptcy case on December 9, 2013. This is not the Debtor's first bankruptcy case. This Debtor, and Lydia Manlangit (co-Debtor in some cases) filed in the Eastern District of California and their resolutions are summarized as follows.

09-38056 Oscar T Manlagit Lydia Manlangit Atty: Marvin Marx Chapter 7 Joint Case Filed: 08/25/09 Discharge: 12/08/09 Closed: 12/11/09	No Distribution Report Order Granting Relief From Stay Dckt. 1 at 25, 26. Schedule I Line 16: \$6,338 Schedule J Line 18:(\$7,574)
10-33157 Oscar Manlangit Lydia Manlagit Atty: Joseph Lazaro Chapter 13 Joint Case Filed: 05/19/2010 Dismissed: 07/30/2010	Dckt. 14 at 25-30 Chapter 13 Plan provides for \$1,966.95 monthly plan payment for 60 months. No creditor claim payments except current monthly installment for claim secured by first deed of trust on Debtors' home. (Improperly classified as Class 1 if no arrearage to cure.) Debtors to seek a "lien strip" of second on home. Dckt. 26 at 1,2 Amend. Sch. I Line 16: \$4,767.23 Amend. Sch. J Line 18: (\$3,386.26) Dckt. 30 - Civil Minutes Case dismissed for Debtors' failure to commence making plan payments, failure to attend First Meeting of Creditors, failure to provide tax records, failure to properly serve proposed plan on creditors. Dckt. 42. Motion to Vacate Dismissal Denied.

<p>11-46084 Lydia Manlagit <i>Pro Se</i></p> <p>Chapter 7 Filed: 11/02/11</p> <p>Dismissed: 01/26/12</p>	<p>Dckt. 1 Petition fails to disclose prior bankruptcy cases and Chapter 7 discharge in 09-38056.</p> <p>Dckt. 18 Order denying Lydia Manlagit <i>ex parte</i> motion to convert to Chapter 13.</p> <p>Dckt. 23 at 17, 18 Schedule I Line 16: \$2946.68 (Does not list any income for spouse) Schedule J Line 18: (\$5,695.00)</p> <p>Id. at 28 Statement of Financial Affairs Question 16, Lydia Manlagit states under penalty of perjury “None” in response to question to identify current spouse or ex-spouse within prior eight years.</p> <p>Dckt. 33. Civil Minutes for hearing on motion to dismiss case. Lydia Manlagit failure to attend First Meeting of Creditors. Reason stated by Lydia Manlagit for failure to attend was that she was ill. Case dismissed when Lydia Manlagit failed to attend continued meeting of creditors.</p>
<p>12-22513 Oscar Manlangit <i>Pro Se</i></p> <p>Chapter 13 Filed: 02/09/12</p> <p>Dismissed:04/23/12</p>	<p>Dckt. 21 at 14, 15 Schedule I Line 16: \$6,977.05 Schedule J Line 18: (\$5,280.00)</p> <p>Dckt 22. Chapter 13 provides for monthly plan payments of \$100.00 for 60 months. Plan provides for current monthly Class 1 payment of \$2,500.00 and no arrearage payment. (Improper Class 1 claim.) The only other claim provided for in the Plan are Class 7 general unsecured to receive a 4% dividend (projected \$5,5149.60 distribution).</p> <p>Case dismissed for failure of Debtor to appear at First Meeting of Creditors, failed to file and set for hearing motion to confirm Chapter 13 Plan, failure to provide copies of tax returns, and failure to provide copies of payroll advices. Motion, Dckt. 39; Order Dckt. 51.</p> <p>Dckt. 52. Opposition to motion for relief from automatic stay disputes the validity of a foreclosure on the Debtor’s residence. States that Debtor is preparing an adversary proceeding with respect to the contentions of an invalid foreclosure. Motion for relief from stay was dismissed as moot, with 11 U.S.C. § 362(d)(4) relief denied Civil Minutes, Dckt. 53, because the court denied the motion as moot.</p>

13-35505 Oscar Manlangit (Current Case) Chapter 13 Filed: 12/09/13	Dckt. 21 at 12, 13 Schedule I Line 16: \$4,800.00 (with no withholding or deductions) Schedule J Line 18: (\$4,600.00) (No expenses for taxes, health insurance)
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From a review of this file and the other files for the multiple bankruptcy cases filed by this Debtor and his spouse, Lydia Manlangit, cause exists to dismiss this bankruptcy case. There has been, and is no good faith prosecution of the Chapter 13 cases. To the extent that the Debtor and his wife seek to prosecute a claim contesting the validity of the foreclosure on their residence, they may bring such action in the California Superior Court (the court of general state court jurisdiction) or, if other non-bankruptcy federal grounds exist as required by Article III of the United States Constitution, in the United States District Court.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and the Office of the United States Trustee on January 21, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed. No appearance required.

Failure to Commence Plan Payments

The Trustee argues that the Debtor did not commence making plan payments and is \$200.00 delinquent in plan payments, which represents one month's \$200.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

Delinquency

The Trustee seeks dismissal of the case on the basis that the Debtor is \$200.00 delinquent in plan payments, which represents one month of the \$200.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Failure to Provide Tax Returns and Other Documentation

The Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). In addition, the Trustee asserts that the Debtor has failed to provide the Trustee with answers to questions about the Debtor's business (such as recent profits and losses, a list of employees, and other questions in the Business Case Questionnaire) and other documentation (such as bank statements, business

tax returns, licenses, and any insurance policies). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

5. [13-35112](#)-E-13 **TIFFANY HARRIS**
C. Anthony Hughes

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-31-14 [[16](#)]**

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on January 27, 2014). The court docket reflects that on February 5, 2014, the Debtor paid the fees upon which the Order to Show Cause was based.

The Order to Show Cause is discharged. No appearance required.

The fees having been paid, the Order to Show Cause is discharged.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions are ordered, and the case shall proceed.

6. [13-30915](#)-E-13 PETER/THERESA SMITH
NLE-2 Timothy J. Walsh

MOTION TO DISMISS CASE
1-17-14 [[32](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 17, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to continue the hearing on the Motion to Dismiss to 3:00 p.m. on March 4, 2014. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Prior Plan Denied, No New Plan

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on December 17, 2013. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

No Valuation Motion Pending

The Trustee further argues that the Debtors have not filed a new Motion to Value Collateral of PNC Bank since Debtor's Motion to Value Collateral of PNC Bank was denied on October 22, 2013 (Docket #26). A review of the docket shows that no further Motions to Value Collateral have been filed to date. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

OPPOSITION

Debtors filed an opposition to the motion. The opposition requests the court to give Debtors an additional 30 days in which to file an amended plan as the Debtors are in the process of a loan modification that requires amendment of the plan.

However, Debtor does not address the Motion to Value issue. Furthermore, the process for making "pending loan modification negotiations" part of a confirmed Chapter 13 Plan and the plan terms at issue were developed over more than two years with the input of knowledgeable debtor counsel and sophisticated creditor counsel and creditors. Requiring a

substantial adequate protection payment quickly separated the canard debtors with no intention of making any payments from the debtors proceeding in good faith (whether or not they had a realistic financial plan for modification). It also provided the creditor with a substantial adequate protection payment, as well as creating a track record of payments (which in some cases has replaced three months of trial loan modification payments).

The plan terms also provide the protection to the creditor of getting the stay terminated so that it can foreclose on the collateral if the loan modification is not approved or the debtor does not proceed in good faith. The plan terms, which require only that the creditor shows that specific information was requested and not timely applied (the 30-day period used by the court was pulled from the HAMP loan modification procedure), protects the creditor.

The Debtors commenced the present case on August 19, 2013. The court denied confirmation of the prior plan due to the Debtors' failure to file a motion to value the claim of PNC Mortgage and there being a purported trial loan modification in process without any adjustment in what was to be paid the creditor.

Only after the present Motion to dismiss was filed does a motion relating to a loan modification stumble in to the court. Motion, Dckt. 36. The Motion contains requests for "interesting" relief (as characterized by the court):

- A. The Debtors and Residential Credit Solutions, Inc. (the "Lender") want to modify the Note secured by the First Deed of Trust to provide,
 - 1. Principal Balance.....\$268,536.01
 - 2. Term.....01/01/14 - 09/01/36
 - 3. Interest Rate.....4.950%
- B. The Loan Modification Agreement; Exhibit 4, Dckt. 39; provides that the contract is between Residential Credit Solutions, Inc. and the Debtors.
- C. If the court does not approve this Agreement, then the court enter an order allowing Residential Credit Solutions, Inc. to enter into any agreement it wants on whatever terms it wants with the Debtor, and that the court's blanket order approve whatever Residential Credit Solutions, Inc. extracts in terms from these consumer Debtors.

Residential Credit Solutions, Inc. Has filed a proof of claim stating that it is a creditor in this case. Proof of Claim No. 4, Official Registry of Claims in this case. The Note attached to Proof of Claim No. 4 is endorsed in blank. There is attached to the Proof of Claim an assignment of the deed of trust from Mortgage Electronic Registration Systems, Inc. To Residential Credit Solutions, Inc., but other than an endorsement in blank, there is nothing presented showing that the Note has been transferred to Residential Credit Solutions, Inc. or that Residential

Credit Solutions is in physical possession of the Note endorsed in blank. FN.1.

FN.1. While not stated as evidence of any specific fact, when the court conducted an internet search, the Residential Credit Solutions website states that it is a loan servicer, not a debt purchaser. If this is true, then the court questions whether a loan modification with a loan servicer would be of any value to the consumer Debtors.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to 3:00 p.m. on March 4, 2014.

7. [10-26819-E-13](#) JORGE/LINDA JAIME
DPC-8 John A. Tosney

MOTION TO DISMISS CASE
1-17-14 [[88](#)]

Local Rule 9014-1(f) (1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 17, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f) (1) (ii) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered.

The Motion to Dismiss is granted and the case is dismissed. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Delinquency

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,300.00 delinquent in plan payments, which represents multiple months of the \$1,850.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c) (1).

No Substitution of Counsel

The Chapter 13 case was filed in March 2010. In January 2014 the court granted a motion to value the secured claim of Citibank, N.A. In a loss to the Sacramento legal community Debtors' attorney recently passed away. No other attorney has substituted in as counsel for the Debtors in this case. The Debtors are completing the fourth year of their five year plan.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

8. [13-35420](#)-E-13 **LATASHIA RICHARDSON**
 Richard L. Jare

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-9-14 [[18](#)]**

Tentative Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on January 6, 2014). The court docket reflects that the Debtor still has not paid the fees upon which the Order to Show Cause was based and fees that have subsequently become due remain unpaid.

The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is sustained, no sanctions are issued pursuant thereto, and the case is dismissed.

9. [13-30221](#)-E-13 MICHAELA VAN DINE AND MOTION TO DISMISS CASE
TSB-4 PIOTR REYSNER 1-22-14 [[108](#)]
Pro Se
CASE DISMISSED 9/9/13 AS TO
PIOTR ONLY

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and the Office of the United States Trustee on January 22, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Prior Plan Denied, No New Plan

The Trustee's Motion argues that the Debtor (Micaela Van Dine only, herein referred to as "Debtor") did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on December 17, 2013. A review of the docket shows that Debtor filed a new plan and a motion to confirm a plan on February 5, 2014, the motion to confirm the new plan is set for hearing on March 25, 2014 (Docket # 112-116, DCN # MMV-2). However, the Debtor failed to file opposition to the motion to dismiss.

Local rule 9014-1(f)(1) allows the court to make a ruling on the pleadings, without a hearing, when the respondent fails to file written opposition to the motion at least fourteen days preceding the date of the hearing. Debtor's failure to timely file written opposition to the motion constitutes grounds for the court to grant the motion without a hearing.

*Review of Second Amended Chapter 13 Plan,
Motion, and Supporting Pleadings*

The Second Amended Chapter 13 Plan provides that the plan payments through February 5, 2014, total \$1,725.00 and for months 7-60 of the plan the payments shall be \$345.00 a month. Dckt. 115. The Second Amended Plan provides for the following treatment of claims:

Class 1	No Claims	
Class 2		
Carmax Auto Finance	\$14,053.58 Claim, @ 4.5% Interest	\$262.00
Worldmark Timeshare	\$2,400.00 Claim, at 4.5% Interest	\$44.74
Class 3	No Claims	
Class 4	No Claims	
Class 5	No Claims	
Class 6	No Claims	
Class 7	Estimated \$108,679.56 General Unsecured Claims; No Dividend Provided in Plan	
Chapter 13 Trustee Expense	Computed at 6% of the monthly plan payment of \$345.00	<u>\$20.70</u>
	Projected Plan Payments Excluding Class 7 Non-Specified Distribution	327.44

The Motion to Confirm states that the Debtor filed bankruptcy because she was unable to pay her bills. Dckt. 112. Further, the Debtor has a 50% interest in a home, the loan of which is the subject of dispute, having been in litigation for over two years. Debtor states that she is paying rent to her (separated or ex-husband, the other 50% owner) of \$2,500.00 a month for the house which is the subject of the litigation. Only her separated/ex-husband is on title to the property and the payee on the note which is the subject of the litigation. The Debtor's separated/ex-husband is to use the \$2,500.00 to fund the debt owned by the home. FN.1.

FN.1. The Debtor's separated/ex-husband was formerly a co-debtor in this case. He was dismissed by order of the court entered on September 10, 2014. Dckt. 22. In seeking dismissal, the separated/ex-husband stated that (1) he received a Chapter 7 discharge in 2012, (2) he filed this case jointly with the current Debtor "for the sole purpose of saving the marital home," and (3) that he and the current Debtor are separated, with the current Debtor living in the house. Since filing the case, he asserted obtaining

information which made him question the current Debtor's "veracity and ability to tell the truth [at least as to personal matters, though he made no statements about having any evidence of wrongdoing by the current Debtor in this bankruptcy case]."

In her declaration the Debtor states that her plan requires no less than a 0% dividend to be paid creditors holding general unsecured claims. Dckt. 114. The declaration repeats many of the same allegations as stated in the Motion. No current financial information is proved in support of confirmation. Schedule I and J filed in this case provide the following information.

SCHEDULE I INCOME Debtor Micaela Van Dine	INCOME	
Unemployment	\$1,950	
Other Income Consisting of: Roommate Rent... \$1,500 Intern Student Stipend..... \$1,000 Student Loan Living Stipend...\$1,750	\$4,250	
SCHEDULE J EXPENSES Debtor Micaela Van Dine		EXPENSES
Rent/Mortgage		\$0
Property Taxes/Insurance		\$0
Electricity, Heat, Water, Sewer		(\$350)
Telephone		(\$180)
Internet		(\$150)
Home Maintenance		(\$100)
Food		(\$600)
Clothing		(\$50)
Laundry and Dry Cleaning		(\$50)
Medical and Dental Expense		(\$100)
Transportation		(\$250)

Recreation		(\$150)
Homeowner's Renter's Insurance		\$0
Life Insurance		(\$60)
Health Insurance		(\$350)
Auto Insurance		(\$50)
Income Taxes		(\$500)
Timeshare Loan Payment and Dues		(\$200)
HOA Dues		(\$90)
Other Expenses		
Personal		(\$100)
Pet Care		(\$50)
HOA Dues		(\$85)
Daycare		(\$200)
Total Income	\$6,200	
	Total Expenses	(\$3,665)
	Net Monthly Income	\$2,535

Using Schedules I and J, Debtor has \$2,539.00 a month in Monthly Net Income to fund a plan. Further, in response to Question 17 on Schedule I it is stated that Debtor's income shall increase to \$4,200.00 a month (gross) when she enters the Sacramento Police Academy in January 2014. (Schedule I, filed in August 2013 states "January 2013," which the court interprets as a simple typographical error.) No information has been provided concerning the increase in income over the \$1,950.00 of unemployment benefits.

In reviewing the claims in this case, there appears to be approximately \$124,500.00 in general unsecured claims filed by creditors. If from the Debtor's projected \$8,450.00 a month in gross income she were able to provide a \$1,325.00 a month plan payment, she would provide for almost a 50% dividend on general unsecured claims.

The court cannot evidence being presented in connection with the Second Amended Plan which supports the proposed \$345.00 a month payment, which has been in apparent response to the present motion to dismiss.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

10. [13-34223](#)-E-13 NAOMI LEBUS MOTION TO DISMISS CASE
TSB-1 Pro Se 1-22-14 [[26](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, and Office of the United States Trustee on January 22, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed. No appearance required.

Failure to Commence Plan Payments

The Trustee argues that the Debtor did not commence making plan payments and is \$135.80 delinquent in plan payments, which represents one month's plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

Delinquency

The Trustee seeks dismissal of the case on the basis that the Debtor is \$135.80 delinquent in plan payments, which represents one month's plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Failure to Appear at 341 Meeting

Further, the Trustee alleges that while the Debtor personally appeared at the Meeting of Creditors held pursuant to 11 U.S.C. § 341, Debtor indicated that she had retained counsel; however, counsel for the Debtor was not present. A review of the docket shows that no substitution of attorney has been filed in this case on behalf of the Debtor, and that there is no counsel of record for the Debtor. Attendance at the First Meeting of Creditors is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

Failure to Provide Tax Returns

The Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

11. [13-34923](#)-E-13 NAKIIA SMITH
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-27-14 [[41](#)]

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$20.00 due on January 21, 2014). The court docket reflects that on January 29, 2014, the Debtor paid the fees upon which the Order to Show Cause was based.

The Order to Show Cause is discharged. No appearance required.

The fees having been paid, the Order to Show Cause is discharged.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions are ordered, and the case shall proceed.

12. [13-34923](#)-E-13 NAKIIA SMITH
TSB-1 Pro Se

MOTION TO DISMISS CASE
1-22-14 [[32](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, and Office of the United States Trustee on January 22, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed. No appearance required.

Failure to Commence Plan Payments

The Trustee argues that the Debtor did not commence making plan payments and is \$650.00 delinquent in plan payments, which represents one month's plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

Delinquency

The Trustee seeks dismissal of the case on the basis that the Debtor is \$650.00 delinquent in plan payments, which represents one month's plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Failure to Notice Plan

The Trustee asserts that the Debtor did not properly serve the amended Plan on all interested parties and has yet to file a motion to confirm the amended Plan. The amended Plan was filed after the notice of the Meeting of Creditors was issued. Therefore, the Debtor must file a motion to confirm the Plan. See Local Bankr. R. 3015-1(c)(3). A review of the docket shows that no such motion has been filed. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Failure to Provide Tax Returns and Other Documentation

The Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). In addition, the Trustee asserts that the Debtor has failed to provide the Trustee with answers to questions about the Debtor's business (such as recent profits and losses, a list of employees, and other questions in the Business Case Questionnaire) and other documentation (such as bank statements, business tax returns, licenses, and any insurance policies). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

13. [13-36126](#)-E-13 SALVADOR CORTEZ
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
2-3-14 [[25](#)]

Tentative Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on January 29, 2014). The court docket reflects that the Debtor still has not paid the fees upon which the Order to Show Cause was based.

The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is sustained, no sanctions are issued pursuant thereto, and the case is dismissed.

14. [13-33427](#)-E-13 RENEE ESTRADA
Rebecca E. Ihejirika

AMENDED ORDER TO SHOW CAUSE -
FAILURE TO PAY FEES
12-24-13 [[18](#)]

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$69.00 due on December 16, 2013). The court docket reflects that on January 16, 2014, the Debtor paid the fees upon which the Order to Show Cause was based.

The Order to Show Cause is discharged. No appearance required.

The fees having been paid, the Order to Show Cause is discharged.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions are ordered, and the case shall proceed.

15. [08-35031](#)-E-13 **FERRIC/STACY COLLONS** **MOTION TO DISMISS CASE**
DPC-15 **Peter G. Macaluso** **1-17-14** [[121](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 17, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to continue the hearing on the Motion to Dismiss to 10:00 a.m. on April 16, 2014. No appearance at the February 19, 2014 hearing is required.

Delinquency

The Trustee seeks dismissal of the case on the basis that the Debtor is \$960.00 delinquent in plan payments, which represents multiple months of the \$320.00 plan payment. The Trustee states that the last payment received on October 1, 2013. By the Trustee's calculation the Plan requires a total of \$21,270.00 in plan payments, with only \$20,310.00 having been paid by the Debtors. This is how the Trustee computes a \$960.00 delinquency, three monthly payments of \$320.00 each. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

OPPOSITION

Debtor's counsel filed an opposition to the motion arguing that there remains only a \$684.71 remains under the plan. Counsel does not state how he computes a slightly lower arrearage. Debtor's counsel requests a 30 day continuance in order to get in touch with the Debtors as counsel no longer has current phone numbers for the Debtors.

This bankruptcy case was filed on October 17, 2008. The Debtors have slogged through 57 of the 60 required monthly plan payments. The plan has been 95.5% funded. The Debtors, and their counsel, get the benefit of the doubt in these circumstances.

The court continues the hearing to 10:00 a.m. on April 16, 2014. On or before February 24, 2014, counsel for the Debtors shall file with the

court a certificate of service for written correspondence which he has sent to the Debtors advising them of the consequence of failing to complete the plan payments, amending the plan, or seeking a hardship discharge. The court does not want a copy of the correspondence, but a certificate that such written correspondence has been sent to the Debtors.

The court continues the hearing to April 2014 to allow the Debtors and counsel to cure the arrearage, file and have set for hearing a motion to modify the plan (which requires only a 35 day notice), or provide evidence that no default exists.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is continued to 10:00 a.m. on April 16, 2014.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and the Office of the United States Trustee on January 22, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered.

The Motion to Dismiss is granted and the case is dismissed. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Failure to Notice Initial Plan

The Trustee asserts that the Debtor did not properly serve the Plan on all interested parties and has yet to file a motion to confirm the Plan. The Plan was filed after the notice of the Meeting of Creditors was issued. Therefore, the Debtor must file a motion to confirm the Plan. *See* Local Bankr. R. 3015-1(c)(3). A review of the docket shows that no such motion has been filed. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Failure to Appear at 341 Meeting

Further, the Trustee alleges that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

Failure to Provide Tax Returns and Other Documentation

The Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay

which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). In addition, the Trustee asserts that the Debtor has failed to provide the Trustee with answers to questions about the Debtor's business (such as recent profits and losses, a list of employees, and other questions in the Business Case Questionnaire) and other documentation (such as bank statements, business tax returns, licenses, and any insurance policies). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

17.	<u>10-50232-E-13</u>	KATRINA GARCIA	MOTION TO DISMISS CASE
	DPC-4	Mark A. Wolff	1-6-14 [<u>76</u>]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, and Office of the United States Trustee on January 6, 2014. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Delinquency

The Trustee seeks dismissal of the case on the basis that the Debtor is \$984.00 delinquent in plan payments, which represents multiple months of the \$324.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

OPPOSITION

Debtor filed an opposition alleging that she made plan payments totaling \$1,128.00 on or about February 3, 2014, and that she will pay the remaining \$180.00 balance before the hearing date.

However, no evidence being presented that the Debtor is in fact current on the plan payments, the court grants the motion.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

18. [13-35033](#)-E-13 SAMUEL TAPIA
TSB-1 John G. Downing

MOTION TO DISMISS CASE
1-22-14 [[18](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, and Office of the United States Trustee on January 22, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Dismiss without prejudice. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Failure to Commence Plan Payments

The Trustee argues that the Debtor did not commence making plan payments and is \$2,080.00 delinquent in plan payments, which represents one month's plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

Failure to Notice Initial Plan

The Trustee asserts that the Debtor did not properly serve the Plan on all interested parties and has yet to file a motion to confirm the Plan. The Plan was filed after the notice of the Meeting of Creditors was issued. Therefore, the Debtor must file a motion to confirm the Plan. See Local Bankr. R. 3015-1(c)(3). A review of the docket shows that an amended plan and motion to confirm the amended plan were filed on February 5, 2014 (Docket # 22-25, 27, DCN # JGD-1). The motion is set to be heard on March 25, 2014.

Failure to Obtain Credit Counseling

The Trustee seeks to dismiss this case on the basis that Debtor does not qualify for relief under the Bankruptcy Code as Debtor did not receive pre-petition credit counseling as required by 11 U.S.C. § 109(h). Debtor did not file a certificate of credit counseling. This case was filed on November 26, 2013. The Bankruptcy Code requires that the credit counseling must be completed during the 180-day period prior to filing of the petition. *Id.*

OPPOSITION

Debtor filed an opposition to the motion. The opposition states that the Debtor has sent in a check in the amount of \$2,380.00 to cover the missed plan payments. However, no evidence of such payment was provided in opposition to the Motion.

The opposition further states that the Debtor has filed an amended plan and motion to confirm the amended plan. As noted above, a review of the docket shows that an amended plan and motion to confirm the amended plan have been filed. Finally, the opposition asserts that prior to filing the Debtor completed credit counseling, and also states that a certificate will be filed. A review of the docket shows that a certificate of credit counseling was filed on February 6, 2014 (Docket # 28).

Based on the foregoing, the motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 22, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed. No appearance required.

Failure to Commence Plan Payments

The Trustee argues that the Debtor did not commence making plan payments and is \$11,430.00 delinquent in plan payments, which represents multiple months of the \$8,810.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

Delinquency

The Trustee seeks dismissal of the case on the basis that the Debtor is \$11,430.00 delinquent in plan payments, which represents multiple months of the \$8,810.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Prior Plan Denied, No New Plan

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on November 19, 2013. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

20. [10-37338-E-13](#) **EVANGELINE SKIERKA** **MOTION TO DISMISS CASE**
DPC-2 **Leticia Tanner** **1-8-14 [45]**

Local Rule 9014-1(f)(1) Motion - Stipulated Continuance.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 8, 2014. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor and the Trustee filed a Stipulation. The court has determined that oral argument will not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

The Motion to Dismiss is continued to March 19, 2014 at 10:00 a.m., pursuant to stipulation by the parties. No appearance at the February 19, 2014 hearing required.

Delinquency

The Trustee seeks dismissal of the case on the basis that the Debtor is \$6,947.57 delinquent in plan payments, which represents multiple months of the \$1,735.74 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

OPPOSITION

The Debtor filed an opposition to the motion, stating that the amount delinquent, as stated in the in Trustee's motion, is erroneous. The Debtor contends that the correct amount of delinquency at the time of the

filing of the motion was \$3,476.09. The opposition states that the Debtor and the Trustee have reached a stipulation, and requests that the hearing on the motion be continued to March 19, 2014 at 10:00 a.m. to allow the Debtor additional time to comply with the terms of the stipulation.

STIPULATION

The parties reached a stipulation in this case, which was filed with the court on January 28, 2014 (Docket # 49). Pursuant to the terms of the stipulation, the Trustee agrees that the delinquency amount stated in the motion is erroneous, both parties agree that at the time of the filing of the motion the delinquency was \$3,476.09, which represents the entire remaining balance on the plan. The parties further agree that the Debtor will pay \$3,000 by February 19, 2014, and the remaining \$476.09 by March 21, 2014. The parties request the court to continue the hearing on the motion to March 19, 2014. If the Debtor complies with the terms of the agreement, the Trustee agrees to withdraw the motion to dismiss.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to 10:00 a.m. on March 19, 2014.

21. [09-44339-E-13](#) GLEN PADAYACHEE
DPC-1 Peter L. Cianchetta

MOTION TO DISMISS CASE
1-8-14 [[145](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 8, 2014. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Dismiss. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Delinquency

The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,630.38 delinquent in plan payments, which represents multiple months of the \$2,654.57 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

OPPOSITION

The Debtor file an opposition stating that there was confusion regarding when the plan payments were to begin being paid to directly to the mortgage holder. The opposition further states that the Debtor has filed an amended plan and motion to confirm the amended plan. A review of the docket shows that the amended plan and motion to confirm were filed on January 22, 2014 (Docket # 152-157, DCN # PLC-14).

This bankruptcy case was filed on November 6, 2009. The current Modified Plan was confirmed by order filed on October 19, 2011. Dckt. 78. The Opposition argues (for which there has been no evidence presented) that there has been confusion when plan payments were to be made to the Trustee in light of the loan modification. The court does not understand this opposition. The plan provides how much is to be paid to the Trustee, and until the court approves a modification or orders other payments, it binds the Debtor.

The court notes that the Debtor has now filed an amended Schedule I and Schedule J, correcting errors in the original Schedules I and J, which state the income and expenses of the Debtor as of the 2009 commencement of this case. This information is now almost five years old and useless to

this court in considering the defaults and any new motion to confirm a modified plan. The declaration in support of the Motion to confirm the modified plan provides no testimony as to the Debtor's current income and expenses. Dckt. 156. Additionally the declaration fails to comply with 28 U.S.C. § 1746, with the Debtor stating under penalty of perjury that the testimony is true and correct only to "the best of my knowledge and belief." In substance, Debtor is merely stating "I hope the information is true and correct, and though I don't know, I'm informed by someone else and believe (because it lets me win) that what I've said above is true and correct." FN.1.

FN.1. This is not the first time the court has felt that this Debtor has been less than truthful and candid with the court. When filing an earlier motion seeking to have a lender's mortgage payment change not permitted, the Debtor failed to provide the court with the actual current insurance and tax information that he is actually paying (and objecting to the amount stated by the creditor. Civil Minutes, Dckt. 140.

Based on the foregoing, the Motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

22. [09-31940-E-13](#) JOSE GONZALES
DPC-3 Peter G. Macaluso

MOTION TO DISMISS CASE
1-6-14 [[43](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 6, 2014. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Delinquency

The Trustee seeks dismissal of the case on the basis that the Debtor is \$615.00 delinquent in plan payments, which represents multiple months of the \$205.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

OPPOSITION

The Debtor filed an opposition stating that he would be current on his plan payments by the time of hearing.

However, Debtor's provide no evidence regarding payments made to become current. Therefore, the court has no evidence to consider in opposition to the motion.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

23. [11-49642](#)-E-13 **KRISTA TRAVIS** **MOTION TO DISMISS CASE**
DPC-2 **Kristy A. Hernandez** 1-8-14 [[31](#)]

Final Ruling: The Chapter 13 Trustee having filed a "Notice of Withdrawal of Trustee's Motion to Dismiss" for the pending Motion to Dismiss, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Notice of Withdrawal of Trustee's Motion to Dismiss" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is dismissed without prejudice.

24. [09-26247](#)-E-13 DAVID/CHRISTINA WHITEHEAD MOTION TO DISMISS CASE
DPC-6 Steele Lanphier 1-8-14 [\[39\]](#)

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 8, 2014. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Delinquency

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,453.12 delinquent in plan payments, which represents multiple months of the \$2,231.39 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

OPPOSITION

The Debtors filed an opposition to the motion stating that they made a payment of \$2,236.00 on January 11, 2014. Additionally, the opposition stated that the Debtors planned to make an additional payment to fully cure their delinquency before the hearing, or in the alternative, to amend the plan to allow for an extended payment period.

First, the Debtors offer no evidence in support of this argument of their attorney. It is significant that the Debtors would have their attorney "argue" that a payment had been made, but are unwilling, or refuse, to so testify under penalty of perjury.

Second, a review of the docket shows that no amended plan, or motion to confirm an amended plan, has been filed to date.

Based on the outstanding delinquency, cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

25. [09-21061](#)-E-13 CARY/SERENA HOWELL MOTION TO DISMISS CASE
DPC-7 Scott A. CoBen 1-17-14 [[103](#)]

Final Ruling: The Chapter 13 Trustee having filed a Withdrawal of the Motion to Dismiss, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion to Dismiss was dismissed without prejudice, and the matter is removed from the calendar.**

26. [09-25162](#)-E-13 ASISH CHANDRA MOTION TO DISMISS CASE
DPC-3 Mary Ellen Terranella 1-17-14 [[86](#)]

Final Ruling: The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

27. [13-32466](#)-E-13 TANESHIA WRAY
TSB-1 Steven A. Alpert

MOTION TO DISMISS CASE
1-22-14 [[28](#)]

Final Ruling: The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice, and the case shall proceed in this court.

28. [13-35369](#)-E-13 VASILIOS TSIGARIS

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-8-14 [[17](#)]

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on January 3, 2014). The court docket reflects that on February 4, 2014, the Debtor paid the fees upon which the Order to Show Cause was based.

The Order to Show Cause is discharged. No appearance required.

The fees having been paid, the Order to Show Cause is discharged.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions are ordered, and the case shall proceed.

29. [12-31671](#)-E-13 CHRISTIAN NEWMAN
TSB-4 Peter G. Macaluso

MOTION TO DISMISS CASE
1-22-14 [[143](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, and Office of the United States Trustee on January 22, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Failure to File Amended Plan

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on November 19, 2013. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Debtor's Response

Debtor filed a response on February 4, 2014, stating that he will file, set and serve a motion to confirm prior to the hearing on this matter. No reasonable explanation to the delay is given. Debtor does not provide any evidence regarding his effort to file the amended plan.

Amended Plan

On February 13, 2014, the Debtor filed an Amended Plan, Motion to Confirm, and supporting pleadings. Dckts. 152, 149, 151. On February 14, 2014, the Debtor also filed Amended Schedules I and J to correct errors in the original Schedules I and J filed in 2012. Dckt. 154. This Income and Expense information is now almost 2 years old and of little relevance to the court in connection with confirmation of a Fifth Amended Plan.

If Amended Schedules I and J are taken as true (having stated under penalty of perjury that they truthfully state the Debtor's income and expenses as of June 2012),

- A. The Debtor had income of \$3,000.00 a month from his business.
- B. From this the Debtor had expenses of only (\$625.00) a month. To achieve only (\$625.00) in monthly expenses, excluding mortgage, insurance and property taxes, the Debtor states under penalty of perjury,
 - 1. Food and household supply expenses were \$200.00 a month.
 - 2. Clothing, Laundry, and Dry Cleaning were only \$10.00 a month.
 - 3. Personal care products and services were \$0.00 a month.
 - 4. Medical and dental expenses were only \$10.00 a month.
 - 5. Transportation expenses (excluding car payment and insurance) were only \$120.00 a month.
 - 6. Vehicle insurance expense was \$0.00.
 - 7. Health insurance expense was \$0.00.
 - 8. Income and Self-Employment taxes were \$0.00.
 - 9. Repair and maintenance expenses for home were \$0.00.

Amended Schedules I and J, Dckt. 154.

In addition to providing no current income and expense information, Debtor's declaration provides no testimony as to how he could achieve the prior payments in this case with such expenses. Declaration, Dckt. 151. The court finds such statements under penalty of perjury in the Amended Schedules and in the Declaration to be "incredible" (as in not credible, rather than amazing). The Declaration telling the court that during this case the Debtor has depended on the assistance of friends and family doesn't provide testimony as to the Debtor's actual expenses. Such cryptic and incomplete statements are indicative of the Debtor actually having greater income and expenses, and hiding that information from the court, Chapter 13 Trustee, U.S. Trustee, and other parties in interest.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

30. [13-31871](#)-E-13 SYLVIA CARUSO MOTION TO DISMISS CASE
NLE-1 Peter G. Macaluso 1-17-14 [[30](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, and Office of the United States Trustee on January 17, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed. No appearance required.

Failure to File Amended Plan

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on November 19, 2013. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c) (1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

31. [13-33071](#)-E-13 SANTOKH MAHAL

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
2-10-14 [[56](#)]**

Tentative Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$71.00 due on February 4, 2014). The court docket reflects that the Debtor still has not paid the fees upon which the Order to Show Cause was based.

The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is sustained, no sanctions are issued pursuant thereto, and the case is dismissed.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), and Office of the United States Trustee on February 3, 2014. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Delinquent

The Trustee seeks dismissal of the case on the basis that the Debtor is \$778.64 delinquent in plan payments, which represents multiple months of the \$388.88 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

33. [10-35973](#)-E-13 NANNETTE SMITH
DPC-6 Gary Ray Fraley

MOTION TO DISMISS CASE
1-8-14 [[63](#)]

Final Ruling: The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an *ex parte* motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an *ex parte* motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

34. [13-32373](#)-E-13 STEVEN/KAREN LLANES
Michele Garfinkel

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-27-13 [[33](#)]

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on December 23, 2013). The court docket reflects that on January 8, 2014, the Debtor paid the fees upon which the Order to Show Cause was based.

The Order to Show Cause is discharged. No appearance required.

The fees having been paid, the Order to Show Cause is discharged.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions are ordered, and the case shall proceed.

35. [13-35973](#)-E-13 **RANDY WILLIAMS** **MOTION TO DISMISS CASE**
TSB-1 **Mary Ellen Terranella** **2-5-14 [17]**

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, and Office of the United States Trustee on February 5, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to deny the Motion to Dismiss without prejudice. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Federal Bankruptcy Rule 2002(f)(2) and 2002(k) require that the moving party shall transmit to the United States Trustee notice of the dismissal of the case.

Here, the Chapter 13 Trustee is filing a Motion to Dismiss Case. The Proof of Service, however, shows that the Notice of Hearing was only served to Debtor and Debtor's attorney. Dckt. No. 20. Thus under Federal Bankruptcy Rule 2002(k), proper service has not been effected. The Motion to Dismiss Case is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied without prejudice.

36. [09-25574-E-13](#) MAISHA WEARY
DPC-10 Julius M. Engel

MOTION TO DISMISS CASE
1-8-14 [[91](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 7, 2014. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Delinquent

The Trustee seeks dismissal of the case on the basis that the Debtor is \$690.00 delinquent in plan payments, which represents multiple months of the \$345.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor's response

Debtor filed a response, arguing that it is her intent to keep her plan current. In her response, Debtor contends that she has fallen behind the plan before but she has always cured the arrearage. Debtor also claims that this is a mature plan and it would be wasteful to see it fail now. Debtor can file a hardship motion if necessary. Debtor, however, provides no evidence to show that she has taken any effort to cure the arrearage.

This case is closing in on the 60th month of the plan (estimated to be April 2014). The court cannot see a reason why an opposition is (1) unsupported by evidence and (2) does not set forth either a cure or provide evidence that the default has been cured, given that the Debtor has a full month from the January 8, 2014 filing of the motion and the February 3, 2014 filing of the unsupported opposition.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

37. [13-33583](#)-E-13 SUE MARIANO

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-27-13 [[33](#)]**

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on December 23, 2013). The court docket reflects that on January 3, 2014, the Debtor paid the fees upon which the Order to Show Cause was based.

The Order to Show Cause is discharged. No appearance required.

The fees having been paid, the Order to Show Cause is discharged.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions are ordered, and the case shall proceed.

38. [13-33583](#)-E-13 SUE MARIANO

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-27-14 [[52](#)]

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on January 21, 2014). The court docket reflects that on February 10, 2014, the Debtor paid the fees upon which the Order to Show Cause was based.

The Order to Show Cause is discharged. No appearance required.

The fees having been paid, the Order to Show Cause is discharged.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions are ordered, and the case shall proceed.

39. [13-34183](#)-E-13 KRYSTAL GARCIA
TSB-1 Scott J. Saqaria

MOTION TO DISMISS CASE
1-22-14 [[16](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 22, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Delinquent

The Trustee seeks dismissal of the case on the basis that the Debtor is \$300.00 delinquent in plan payments, which represents multiple months of the \$300.00 plan payment. The next scheduled payment of \$300.00 is due on January 25, 2014. The Debtor has paid \$0 into the plan to the date of the Motion. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor's Response

Debtor filed a response, stating that she is working on a motion to confirm an Amended Chapter 13 plan to include the arrearage. Debtor claims that prior to the motion, she will have either cured all arrears in the current plan, or have filed a motion to confirm an amended plan. A review of the record shows that Debtor has not cured the arrearage, or filed any motion to confirm an amended plan.

No amended Plan and motion to confirmed has been filed as of February 15, 2014, nor evidence that the default has been cured.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

40. [09-29085](#)-E-13 RICHARD/TAMMY BOSSMAN MOTION TO DISMISS CASE
DPC-3 Gernald B. Glazer 1-6-14 [\[35\]](#)

Final Ruling: The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

41. [11-31087-E-13](#) FRED/SUSIE SANCHEZ
DPC-1 Stephen M. Reynolds

MOTION TO DISMISS CASE
1-8-14 [[73](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 8, 2014. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to continue the hearing to 10:00 a.m. on March 19, 2014. No appearance at the February 19, 2014 hearing is required.

Delinquency

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,646.00 delinquent in plan payments, which represents multiple months of the \$822.00 plan payment. Prior to the hearing in this matter, another payment of \$822.00 will come due. As a result Debtor will need to pay \$2,468.00 in order to bring his plan current by the date of the hearing. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor's Response

Debtor states in his response that, payments of \$822.00 were made on January 9, 2014 and January 30, 2014 for a total of \$1,646.00. Debtor's response is accompanied by a copy of account ledger provided by National Data Center dated February 5, 2014. A review of the account ledger shows that a payment of \$822.00 was made on January 9, 2014 and January 30, 2014. The two payments are described as "nationwide TFS receipt." "Exhibit A," Dckt. 78.

The Debtor has filed his declaration attesting to the payments. The court authorizes the filing of this declaration, Dckt. 80, on February 6, 2014. The Debtor testifies to events which led to the default and that they will be able to cure the remaining arrearage after February 24, 2014, when the Debtor receives his February 2014 Social Security benefit payment.

In light of the testimony provided, and without making a factual finding as to the alleged facts, the court continues the hearing to March 19, 2014, to allow the Debtors additional time in working with the Chapter 13 Trustee in resolving the defaults.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to 10:00 a.m. on March 19, 2014.

42. 09-38291-E-13 RONALD/ANGELA GATES MOTION TO DISMISS CASE
DPC-12 Aaron C. Koenig 1-6-14 [83]

Final Ruling: The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

43. [13-35991](#)-E-13 RAMON CRUZ

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-30-13 [[36](#)]

Tentative Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$94.00 due on December 26, 2013). The court docket reflects that the Debtor still has not paid the fees upon which the Order to Show Cause was based and fees that have subsequently become due remain unpaid.

However, the court has issued an Order for Hearing on Motion to Dismiss and Attendance of the Debtor and Counsel for Debtor to be heard at 3:00 p.m. on March 25, 2014.

The court's tentative decision is to continue the Order to Show Cause to be heard in conjunction with the Order for Hearing on Motion to Dismiss and Attendance of the Debtor and Counsel for Debtor to be heard at 3:00 p.m. on March 25, 2014.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is continued to 3:00 p.m. on March 25, 2014.

44. [13-35991](#)-E-13 RAMON CRUZ

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-31-14 [[50](#)]

Tentative Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$93.00 due on January 27, 2014). The court docket reflects that the Debtor still has not paid the fees upon which the Order to Show Cause was based and fees that have subsequently become due remain unpaid.

However, the court has issued an Order for Hearing on Motion to Dismiss and Attendance of the Debtor and Counsel for Debtor to be heard at 3:00 p.m. on March 25, 2014.

The court's tentative decision is to continue the Order to Show Cause to be heard in conjunction with the Order for Hearing on Motion to Dismiss and Attendance of the Debtor and Counsel for Debtor to be heard at 3:00 p.m. on March 25, 2014.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is continued to 3:00 p.m. on March 25, 2014.

45. [13-35492](#)-E-13 VERONICA WHEELER

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-13-14 [[16](#)]**

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on January 8, 2014). The court docket reflects that on January 16, 2014, the Debtor paid the fees upon which the Order to Show Cause was based.

The Order to Show Cause is discharged. No appearance required.

The fees having been paid, the Order to Show Cause is discharged.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions are ordered, and the case shall proceed.

46. [13-32493](#)-E-13 WILLIAM/JANET FORTIER
TSB-1 Robert P. Huckaby

MOTION TO DISMISS CASE
1-22-14 [[23](#)]

Final Ruling: The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

47. [12-33397](#)-E-13 JONATHAN/CORAL PRICE
NLE-1 James L. Keenan

MOTION TO DISMISS CASE
1-16-14 [[46](#)]

Final Ruling: The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 22, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed. No appearance required.

Delinquency

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,100.00 delinquent in plan payments. The next schedule payment of \$1,400.00 is due on January 25, 2014. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). The Trustee asks this court to dismiss the case unless the Debtor bring current all plan payments by the date of the hearing on this motion.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 5, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Delinquency

The Trustee seeks dismissal of the case on the basis that the Debtor is \$300.00 delinquent in plan payments, which represents multiple months of the \$150.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

No Amended Plan

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on November 19, 2013. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Causes exist to dismiss this case. The motion is granted and the case is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.

Local Rule 9014-1(f)(2) Motion - Continued Hearing.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 16, 2013. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on October 29, 2013. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

JANUARY 8, 2014 HEARING ON THE MOTION TO DISMISS

The Debtor appeared at the hearing on the Motion to Dismiss on January 8, 2014. Debtor stated that her attorney of record had not communicated with her for two months. Debtor acknowledged that she must retain new counsel. The court continued the hearing for one month, with the admonition to Debtor that she must immediately obtain new counsel to prosecute the case.

FEBRUARY 19, 2014 HEARING ON MOTION TO DISMISS

The court's review of the docket shows that no Substitution of Attorney, or any other document showing an intent to replace the current attorney of record has been filed.

The court is very clear in these situations, the Debtor must obtain replacement counsel if her current counsel is not responding. It is not sufficient, after having a month continuance, to come to court and state that finding replacement counsel has not yet been obtained.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

Dismissal of the case does not divest the court of jurisdiction to address the conduct of parties and counsel in the case. Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a). A bankruptcy court is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see *Price v. Lehitine*, 564 F. 3d at 1058.

If the Debtor has not acted, the court is confident that the Chapter 13 Trustee and U.S. Trustee can bring to the court's attention any issues concerning the conduct, or lack of conduct, of Debtor's counsel in this case.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted and the case is dismissed.